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No. 113

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

HONORABLE BERNARD M. DECKER,
UNITED STATES DISTRICT JUDGE, et al.,
Petitioners,

vs.

HARPER & ROW PUBLISHERS, INC., et al.,
Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MOTION OF THE ILLINOIS STATE BAR ASSOCIATION FOR LEAVE TO JOIN IN THE BRIEF OF THE AMERICAN BAR ASSOCIATION AS AMICUS CURIAE

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The Illinois State Bar Association (the Association) respectfully moves under paragraph 3 of Rule 42 of the Supreme Court Rules for leave to file a brief *amicus curiae* in support of the position of respondents in this cause by joining in the brief heretofore filed by the American Bar Association as *amicus curiae*. Counsel for the respondents and for the American Bar Association have consented to the granting of this motion. Consent of petitioners' counsel has been requested but has been denied.

The Illinois State Bar Association is the second largest voluntary bar association in the nation, including within its

ranks approximately 14,500 members of the bar. Illinois practitioners serve one of the largest business and commercial centers in the United States. According to responsible and informed authorities, more than 85% of all the business of this country is conducted in corporate form. See United States Department of Commerce, *Survey of Current Business*, Volume 5, No. 7, Page 21 (July, 1970). Therefore, any proposal which would drastically reduce the effective utilization of counsel by corporate clients and adversely affect the administration of law in the business community is a matter of vital importance to the lawyers in Illinois and throughout the country.

The Association supports in all respects the arguments set forth in the brief of the American Bar Association. We urge rejection of the petitioners' plea that the Court embrace the "control group" test followed by the trial court. For all practical purposes the adoption of the "control group" test would deny the attorney-client privilege to all corporate clients. Arguments advanced by the petitioners in this cause were fully considered and firmly rejected in *Radiant Burners, Inc.* v. *American Gas Association, et al.*, 320 F.2d 314 (7th Cir. 1963), *cert. den.*, 375 U.S. 929 (1963).

This case has aroused widespread concern among the members of the bar because of their conviction that the use of the "control group" concept destroys the integrity of the professional relationship, so far as corporate clients are concerned, and jeopardizes the constitutional protection of corporation employees against self-incrimination.

The Association respectfully urges that the far-reaching policy issues presented should not be considered solely in the context of the case at bar or even in the broader context of legal matters in litigation. One of the unique characteristics of the American legal system is that lawyers are advisers and counsel to clients, as well as their advocates in litigation.

Administration and enforcement of the growing mass of laws and regulations affecting American business depends heavily upon an independent bar. The American legal counsel brings independent professional judgment, as well as knowledge of the law, to the assistance of his client. This principle underlies much of the new Code of Professional Responsibility, approved by the House of Delegates of the American Bar Association in August, 1969, and already adopted by more than a score of the states. (See Canon 5 of the Code.) In order to assist in maintaining the integrity of the legal profession, the new Code in certain instances places an affirmative duty on lawyers to disclose unprivileged knowledge of professional misconduct that is prejudicial to the administration of justice. (See Canon 1 and Disciplinary Rule 1-103 of the Code.) In a period when growing disrespect for law is a matter of national concern, it would be contrary to the public interest to cripple, if not effectively destroy, the role that the members of the legal profession have in achieving voluntary compliance with business laws and regulations.

In view of the transcendent public importance of the question presented in this cause and its impact upon the nature and extent of lawyer-client relationship, it is respectfully suggested that counsel for the American Bar Association be permitted to participate in the oral argument in order to present fully the views of the members of the bar.

Respectfully submitted,

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